

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:)	
)	
THERESA THOMAS,)	
)	
Complainant,)	
)	
and))Charge No: 2000CF1200
))EEOC No: 21 BA00606
))ALS No: 11723
LA RABIDA CHILDREN'S HOSPITAL,)	
)	
Respondent.)	

RECOMMENDED ORDER AND DECISION

This matter is before me on Respondent's Motion for Summary Decision. Respondent filed a written motion along with exhibits and affidavits on January 31, 2003. Complainant did not file a response, although given time in which to do so. Respondent filed a reply March 4, 2003. The record indicates the motion has been properly served upon all Parties and the Illinois Department of Human Rights. This matter is ready for decision.

Contentions of the Parties

Complainant contends that she was the victim of sex discrimination when Respondent discharged her because she was pregnant and while she was on maternity leave. Respondent contends that the reason for Complainant's discharge was unrelated to her pregnancy. Respondent further contends that Complainant was discharged for failing to obtain a licensed social worker certification, a requirement of the position, after having been given many extensions of time in which to do so. Complainant argues that the requirement is disingenuous and is used by Respondent to justify otherwise illegal discrimination.

The following facts were derived from uncontested pleadings, affidavits and other documentation in the record in accordance with standards applicable to motions for summary decision, which require that all factual conflicts in the record be viewed in the light most favorable to the non-moving party.

FACTUAL FINDINGS

1. Complainant's sex is female.
2. Respondent is a not-for-profit pediatric hospital located in the City of Chicago whose mission is caring for and providing comprehensive health services to abused children and children with chronic illnesses and disabilities.

3. Respondent hired Complainant on November 1, 1996 as a social worker to work with disabled and abused children and their families.
4. Neil J. Hochstadt, Ph.D. (Hochstadt) is Director of Behavioral Sciences Department at Respondent since 1976.
5. Hochstadt hired Complainant as a social worker November 1, 1996.
6. Respondent requires that its social workers obtain a state Licensed Social Worker (LSW) certification within one year of being hired.
7. On February 15, 1999, Complainant received a memorandum from Hochstadt indicating that he had previously discussed the LSW certification with Complainant, that she had been employed more than one year without having received the certification, and allowing her until June 1, 1999 to obtain the certification.
8. On March 17, 1999, Complainant notified Respondent that she was pregnant.
9. On April 9, 1999, Complainant received a memorandum from Hochstadt asking her to give him a status on her progress toward obtaining the LSW certification.
10. On July 2, 1999, Complainant received a memorandum from Hochstadt, which memorialized a previous conversation had on that same date with Complainant and Complainant's supervisor, Dr. Solace. The memorandum stated that Hochstadt had learned from that conversation that Complainant had not passed the certification examination. Hochstadt indicated that his understanding was that Complainant had taken and failed the more stringent Licensed Clinical Social Worker (LCSW) examination instead of the less difficult and required LSW. He, therefore, reiterated and urged Complainant to take the LSW rather than the LCSW examination, which Respondent did not require. Respondent agreed to continue Complainant's employment for 4 months to allow her time to take the LSW, based on Complainant's representation to Respondent that there was a waiting period and she could not retake the examination for 90 days. Hochstadt allowed Complainant until October 25, 1999 to obtain the certification and warned that failure to do so would result in termination.
11. On July 9, 1999, Complainant received a memorandum from Hochstadt indicating that he had information that Complainant could petition the state board for a waiver to take the examination prior to the 90-day waiting period, and further urging Complainant to file the petition for waiver. Hochstadt left undisturbed the requirement that Complainant obtain the certification no later than October 25, 1999.
12. On August 27, 1999, Complainant requested and was granted a maternity medical leave of absence pursuant to the Family and Medical Leave Act (FMLA).
13. Complainant was not scheduled to return from maternity leave until November 19, 1999.
14. Complainant was released by her doctor to return to work November 16, 1999.
15. On November 23, 1999, Complainant received a memorandum from Hochstadt memorializing that Complainant had telephoned him on October 22, 1999 and had indicated she had not taken the LSW examination. Hochstadt indicated that, in light of Complainant's medical situation and medical leave, he was extending the deadline to pass the examination until December 23, 1999 and warning

- Complainant that failure to do so would result in automatic termination of her employment on that date.
16. Rebecca Cougias (Cougias) was employed as a social worker without having obtained certification for approximately 2 years -- from July 17, 1996 until August 1998.
 17. Cougias was sent a memorandum by Hochstadt on July 3, 1996, prior to her start date, indicating that she was required to obtain the LSW within 12 months of her starting date.
 18. Allyson Thomas (Thomas) was employed as a social worker without having obtained certification approximately 1-½ years -- from December 1997 until July 1999.
 19. Thomas was sent a memorandum by Hochstadt on February 15, 1999 indicating that she had not obtained her LSW within one year of employment and allowing her until June 1, 1999 in which to do so.
 20. Complainant was employed as a social worker without having obtained certification approximately three years -- from November 1, 1996 until December 23, 1999.
 21. As of December 23, 1999, Complainant had not obtained the LSW certification.

CONCLUSIONS OF LAW

1. Complainant is an “aggrieved party” as defined by section 1-103(B) of the Illinois Human Rights Act, 775 ILCS 5/1-101 et. seq. (Act).
2. Respondent is an “employer” as defined by section 2-101(B)(1)(a) of the Act and is subject to the provisions of the Act.
3. Complainant cannot establish a prima-facie case of unequal terms and conditions of employment on the basis of her sex with regard to her condition of pregnancy.
4. Respondent articulated a legitimate, non-discriminatory reason for its adverse action against Complainant.
5. There are no genuine issues of material fact as to Complainant’s prima facie showing or as to the issue of pretext.
6. Respondent is entitled to a recommended order in its favor as a matter of law.

DISCUSSION

Complainant filed a Charge of discrimination against the Respondent with the Illinois Department of Human Rights (Department) on November 29, 1999. The Department filed a Complaint on behalf of the Complainant with the Illinois Human Rights Commission on February 22, 2002, alleging Complainant to have been aggrieved by practices of sex discrimination related to pregnancy in violation of the Illinois Human Rights Act (Act), 775 ILCS 5/1-101 et. seq.

This matter is being considered pursuant to Respondent’s Motion for Summary Decision. A summary decision is analogous to a summary judgment in the Circuit Court. **Cano v. Village of Dolton**, 250 Ill.App.3d 130, 620 N.E.2d 1200 (1st Dist. 1993). A motion for summary decision should be granted when there is no genuine issue of material fact and

the moving party is entitled to a recommended order in its favor as a matter of law. **Strunin and Marshall Field & Co.**, 8 Ill. HRC Rep. 199 (1983). The movant's affidavits should be strictly construed, while those of the opponent should be liberally construed. **Kolakowski v. Voris**, 76 Ill.App.3d 453, 395 N.E.2d 6 (1st Dist. 1979). The movant's right to summary decision must be clear and free from doubt. **Bennett v. Ragg**, 103 Ill.App.3d 321, 431 N.E.2d 48 (2nd Dist. 1982).

Complainant's Complaint essentially alleges that she was subject to unequal terms and conditions of employment. Since there is no evidence of discrimination by direct means in the record, Complainant must prove her case through indirect means. The method of doing so is well established. First, Complainant must establish a prima facie showing of discrimination. Once she has done so, Respondent must articulate a legitimate, non-discriminatory reason for its adverse action. After this articulation, Complainant must then prove that Respondent's articulation is pretextual. **Zaderaka v. Human Rights Commission**, 131 Ill.2d 172, 545 N.E.2d 684 (1989); **Texas Department of Community Affairs v. Burdine**, 450 U.S. 251 (1981).

In order to establish a prima facie showing of such discrimination, Complainant must prove: 1) that she is in a protected class; 2) that she was treated in a particular manner by Respondent; and 3) that similarly situated employees outside her protected class were treated more favorably. **Moore and Beatrice Food Co.**, 40 Ill. HRC Rep. 330 (1988).

Complainant has demonstrated elements one and two as Complainant's pregnancy places her into a protected class and Complainant was discharged from her position with Respondent. However, Complainant has a major problem with the third element of her prima facie case, as it is clear that Complainant's two identified comparables were not treated more favorably than Complainant. Both comparables resigned after having not obtained their respective LSW certifications. Cougias was employed as a social worker without having obtained certification for approximately 2 years -- from July 1996 until August 1998 and Thomas was employed as a social worker without having obtained certification approximately 1 ½ years--from December 1997 through July 1999. Contrasting is Complainant, who was allowed to work for over three years without having obtained the required certification -- from November 1, 1996 through December 23, 1999¹. For this reason, Complainant's prima facie showing fails.

Even if Complainant could establish a prima facie case, there is adequate support in the record for dismissal of this Complaint. Respondent has proffered a legitimate non-discriminatory reason for discharging Complainant. Respondent contends it discharged Complainant for failure to obtain the LSW certification after having been given several

¹ Although Complainant maintains she was discharged October 25, 1999, while she was on still on maternity leave, in her *Response to Respondent's Request for Admission by Complainant* answer No.13, she admits that she received a copy of Hochstadt's November 23, 1995 letter informing her that he was allowing her yet another extension until December 23, 1999 to obtain certification, further indicating that during the one month period from the date of the letter until December 23, 1999, Complainant would be held out of service without pay, and further warning Complainant that her employment will automatically be terminated as of December 23, 1999, if certification has not been obtained.

extensions of time in which to do so. Following Respondent's articulation, Complainant has the burden to demonstrate that Respondent's proffered reason is pretextual.

To establish pretext, Complainant proffers in her interrogatory answers² that Respondent's contention that it had a requirement that all social workers obtain their LSW license is itself fictional and that the alleged requirement was selectively used by Respondent to support legal justification of otherwise discriminatory acts of discharge.

However, Complainant submits no evidence whatsoever to support this theory. There is nothing in the record to support that Complainant challenged Respondent at any time during her employ that this requirement was a surprise to her, was not contemplated as a term of employment or was otherwise unexpected. Respondent's memoranda to Complainant regularly referred to the certification as having been previously discussed with Complainant and there is nothing in the record to show that Complainant refuted or objected to the characterization in the memoranda that the requirement had been previously discussed with her. Further, Respondent submits unrefuted evidence that the same requirement to obtain an LSW was imposed on Thomas and Cougais, Complainant's identified, non-pregnant, comparables.³

Respondent's first written memorandum to Complainant regarding the LSW certification was sent to Complainant over one month prior to Complainant having notified Respondent that she was pregnant. It defies logic to tie Respondent's insistence that Complainant obtain the certification to any intent to discriminate based on pregnancy when Respondent was not aware of Complainant's pregnancy until after its first written notification to Complainant that she had failed to comply with the requirement within her first year of employment. Further, Complainant admits she had not obtained the required certification as of the final extended deadline on December 23, 1999.⁴

Complainant has offered no evidence that can be construed to cast doubt that the certification requirement was indeed a valid requirement that Respondent imposed on all of its social workers. In the absence of evidence from Complainant, Respondent's evidence stands un rebutted and must be accepted. **Koukoulomatis v. Disco Wheels**, 127 Ill.App.3d 95, 468 N.E.2d 477 (1st Dist. 1984). Thus, Complainant fails to raise a genuine issue of material fact on the issue of pretext and the Respondent's motion must be granted.

Paragraph 8-106.1 of the Illinois Human Rights Act, 775 ILCS 5/101-1 et. seq., specifically provides that either party may move, with or without supporting affidavits, for a summary order in its favor. If the pleadings and affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a recommended order as a matter of law, the motion must be granted. The Commission has adopted the standards used by the Illinois courts in considering motions for summary

² See Interrogatory Answer No. 18 of *Complainant's Response to Respondent's First Set of Interrogatories*.

³ See Affidavit and exhibits A and B of Nancy Ramski, Director of Human Resources.

⁴ Complainant admits at No. 15 of *Response to Respondent's Request for Admission by Complainant* that she had not obtained the LSW certification as of December 23, 1999.

judgment for motions for summary orders, and the Illinois Appellate Court has affirmed this analogy. **Cano v. Village of Dolton, 250 Ill App. 3d 130, 620 N.E.2d 1200, 189 Ill. Dec. 833 (1st Dist. 1993).**

As there are no issues of material fact as to Complainant's showing of a prima facie case or as to whether Respondent's decision to discharge Complainant was pretextual, Respondent's motion for summary decision must be granted. Accordingly, the July 23, 2003 status date on this matter is stricken.

RECOMMENDATION

For all the above reasons, it is recommended that the Complaint and the underlying charge of Discrimination be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

By: _____
SABRINA M. PATCH
Administrative Law Judge
Administrative Law Section

ENTERED: June 6, 2003